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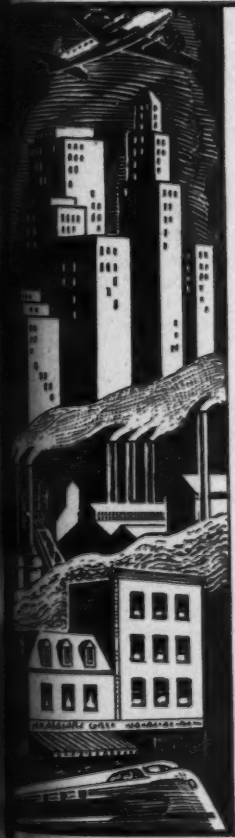

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HOW TO CHOOSE A TRANSFER AGENT... PART 3

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JANUARY 1951

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Recent Decisions

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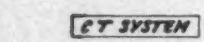

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doing business in canada

CANADA, by reason of its proximity, continues to attract the interest of business corporations of the United States, and from time to time such companies project themselves into the Provinces to carry on business there. Among recent developments, there has been evident a considerable interest in the oil fields of the Prairie Provinces. Automotive and other manufacturing companies have been among those which have long displayed activity in the Canadian markets.

A United States corporation which contemplates extending its operations into Canada usually weighs the possible advantages and disadvantages of four courses of procedure with respect to the type of organization through which the Canadian activities may be furthered:

1. The qualification of the American company as a foreign corporation in each of the Provinces in which local activity is contemplated.

2. The organization of a subsidiary under the Dominion law and its registration in the Provinces to the extent that such registration is required. (It is not too generally realized throughout the States that the Dominion Parliament, corresponding to our Congress, has enacted law under which a "Dominion" company may be incorporated, which is available in addition to the laws enacted by each Provincial legislature, under which Provincial companies may be incorporated.)

3. The organization of a subsidiary in one of the Provinces in which local activities are to be carried on and its qualification as a foreign or "extra-Provincial" corporation in other Provinces.

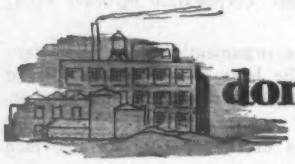
4. The organization of a subsidiary under the laws of one of the United States, such as Delaware, and its qualification as a foreign corporation under the laws of the appropriate Province or Provinces.

There are many factors which enter into the choice of the type of company to be operated in Canada, some of them peculiar to the type of business to be conducted. Generally, it may be noted that the employment of a subsidiary, either Canadian or American, has the effect of segregating Canadian income. This is sometimes regarded as an advantage when preparing reports under the Dominion Income Tax Act, where the income taxed is income derived from Canadian sources, there being no allocation or apportionment formula used in determining taxable Canadian income in that connection.

As between a subsidiary to be incorporated under either the Dominion law or under the law of a particular Province, the selection made is sometimes dependent upon whether it is expected that there will be business operations immediately or in the future in more than one Province. A restriction of business activity to a particular Province may lead to incorporation there. Activity in a number of Provinces may bring about a decision to incorporate under the Dominion law, since, generally, the compliance with Provincial

"registration" provisions required of a Dominion company is usually regarded as less onerous than the compliance with Provincial qualification procedure required of a Provincial company.

Usually given consideration also in connection with proposed Canadian activities by American interests, is the Tax Convention signed by Canada and the United States and proclaimed by the President on June 17, 1942, having avoidance of double taxation as its principal object. It is customary to weigh the effect of Canadian taxes under the provisions of this Tax Convention and the pertinent provisions of the Internal Revenue Code of the United States.



domestic corporations

DELAWARE

Sec. 51A strictly construed to relate to transactions consummated prior to purchase of stock by stockholder instituting derivative suit.

Section 51A of the General Corporation Law of Delaware contains a provision that, in a derivative suit instituted by a stockholder of a Delaware corporation, it is required to be averred in the bill of complaint that the complainant was a stockholder of the corporation at the time of the transaction of which he complains. A question raised was whether certain of the plaintiffs, as to whom defendants sought to have the suit dismissed or stricken on the ground that they were not stockholders at the times of the transactions of which they complained, were owners, either legal or equitable, of the stock at the times of those transactions.

None of these plaintiffs acquired their stock prior to October, 1947, whereas the transactions of which they complained took place during a period ending in 1945. A conspiracy was alleged, involving the diversion of opportunities by plaintiff's corporation to purchase stock in two other corporations in 1944 and 1945, and culminating in a merger, in 1948, of the two corporations and one other company. Plaintiffs sought to have a trust impressed upon the stock of the third company, the surviving corporation under the merger. The Court of Chancery, New Castle County, said: "The issue is whether the actual conversion of the three corporate opportunities to purchase stock in 1944 and 1945 are the transactions of which plaintiffs complain, or whether, because of the alleged continuing scheme, the 1948 merger constituted the culmination of the transactions of which plaintiffs complain."

In ruling against these plaintiffs, the court remarked: "I must determine what are the 'transactions' and whether they were continuing when plaintiffs acquired their stock. Of course, in one sense every wrongful transaction con-

stitutes a continuing wrong to the corporation until remedied. But if the rule embodied in Sec. 51A is to be meaningful, then clearly 'continuing wrong' cannot be construed in such a sense because it would substantially defeat the statutory policy embodied in Sec. 51A. That policy is the prevention of the evil of purchasing stock in order to maintain a derivative action designed to attack a transaction which occurred prior to the purchase of the stock. See *Rosenthal v. Burry Biscuit Corp.*,—Del. Ch.—, 60 A. 2d 106. Although a conspiracy culminating in the 1948 merger is alleged, the fact is that plaintiffs complain of and seek relief with respect to three specific transactions. They involve three stock purchases in the years 1944 and 1945. Those purchases in my opinion are the transactions in the sense in which the term 'transaction' is employed in Sec. 51A. I say this because they are wrongful acts which plaintiffs want remedied and which are susceptible of being remedied in a legal tribunal. The allegation of a conspiracy cannot obscure the hard fact that the stock purchases are the wrongs which plaintiffs want rectified. Once it is decided, and I so decide, that the stock purchases are the 'transactions' of which plaintiffs complain, it almost necessarily follows under the undisputed facts that such transactions were consummated prior to the date plaintiffs acquired their stock."

Newkirk et al. v. W. J. Rainey, Inc., Court of Chancery, New Castle County, October 26, 1950. James R. Morford and Edward W. Cooch, Jr., of Morford, Bennethum, Marvel & Cooch of Wilmington, for plaintiffs. C. S. Layton of Richards, Layton & Finger and Earl F. Reed of Thorp, Bostwick, Reed and Armstrong of Pittsburgh, Pennsylvania, for moving defendants. Commerce Clearing House Court Decisions Requisition No. 441044.

Federal Court concludes that mere existence of arbitration clause in contract would not bar bringing of suit on contract.

In an action in the Delaware Federal District Court between two corporations, in which one sought a declaratory judgment interpreting provision of a contract and for damages, in which the court concluded that the real basis of the plaintiff's claim was not an interpretation or construction of the contract but was the establishment of a new contract by the court, which the court felt it was not able to accomplish and, therefore, gave judgment for the defendants, the following language appears with respect to arbitration:

"It has also been suggested that plaintiff's only remedy, at least as regards its right to sue derivatively, is to compel the defendants to submit the matter in controversy to arbitration. Under the law of Delaware, however, it seems that an agreement to arbitrate cannot generally be pleaded in bar of an action. Electrical Research Products, Inc. v. Vitaphone Corp., 20 Del. Ch. 417, 171 A. 738. In addition, it has been held that federal courts will not give effect to an arbitration clause to the extent of refusing to take jurisdiction where arbitration has not been instituted. See Hunkin-Conkey Const. Co. v. Pennsylvania Turnpike Commission, D. C., 34 F. Supp. 26. In the light of these authorities, therefore, I conclude that the existence of the arbitration clause does not in any way bar the bringing of this action."

Motor Terminals, Inc. v. National Car Co. et al., 92 F. Supp. 155. Richard F. Corroon and Southerland, Berl & Pot-

ter of Wilmington, and R. Randolph Hicks, of New York City, for plaintiff. James R. Morford and Marvel & Morford of Wilmington, and Carl H. Richmond of Washington, D. C., for defendants.

NEW JERSEY

Good cause and good faith required to be shown as a condition to inspection of corporate books of account.

Plaintiff stockholder moved for an order for the inspection of the stock books, stock transfer books and the books of account of the corporate defendant. He submitted no petition or affidavit, but in his brief referred to parts of depositions which were not before the court. There was on file an affidavit which charged bad faith on the part of the plaintiff.

As to the stock books and stock transfer books, the Superior Court of New Jersey, Chancery Division, indicated that plaintiff was entitled to an examination of these, since R. S. 14:5-1, N. J. S. A. provides that these books shall be open at all times to the examination of every stockholder. As to the inspection of the books of account, a different situation existed, the court observing: "Good cause has not been shown for an inspection of the books of account and with respect to them the motion is denied, without prejudice however to a further application, supported by affidavit, setting forth specifically what books are sought to be inspected, what period of time is to be covered, by whom the inspection is to be made if not by plaintiff in person, the purpose of the inspection and such other matter as will enable the court to determine whether the application is made in good faith and for good cause; and if inspection is found to be warranted, to determine what limitations or restrictions, if any, should be imposed."

Rosenbaum v. Holthausen et al., 75 A. 2d 760. Milton, McNulty & Angelli of Jersey City, for the plaintiff. Gross, Blumberg, Mehler & Goldberger of Newark, for the defendants.

NEW YORK

Sec. 61-b, G.C.L., security fixed by Federal court in stockholders' derivative suit on behalf of subsidiary against parent corporation.

Plaintiffs, stockholders of a subsidiary named International Cigar Machinery Company, brought a derivative action against the parent and their own company for damages and an accounting from the parent corporation in the United States District Court, Southern District of New York. The subsidiary moved for an order directing plaintiffs to furnish security pursuant to Section 61-b of the General Corporation Law. The court observed that there was no question that Section 61-b was applicable to a derivative action based on diversity of citizenship in the Federal courts. "It is conceded also," continued the court, "that plaintiffs are subject to the security provisions of that section, for they own less than 5% or $50,000 worth of the stock of International. International is therefore entitled to security for its costs, including

attorney's fees in this action. The only question is the amount of security. The plaintiffs claim such security should be no more than $1,000 since International is merely a nominal defendant and its attorneys are also the attorneys for American (the parent). The corporation on behalf of which plaintiffs sue must be made a party defendant so that a decree may appropriately give the corporation the fruit of any recovery by the plaintiffs."

The court fixed the amount of security at $3,500 for the expense of the subsidiary in connection with the suit, subject to the provisions of Section 61-b concerning future increase or decrease.

Fuller et al. v. American Machine & Foundry Co. et al., *91 F. Supp. 710. Nathan B. Kogan, Irving Constant, of counsel, of New York City, for plaintiffs. Cahill, Gordon, Zachry & Reindel, Mathias F. Correa, Frederick P. Warne, Irwin Schneiderman of New York City, for defendant International Cigar Machine Co.

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* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9495.

Right to appraisal, of stockholder dissenting to reorganization plan, regarded as an exclusive remedy.

A stockholder, on behalf of himself and other stockholders of a dissolved New York corporation, similarly situated, instituted a derivative suit in which one of the defendants was the parent of the dissolved company. Under a reorganization plan, the parent had acquired all the assets of plaintiff's company and three others of its subsidiaries. Plaintiff, prior to the stockholders' meeting approving the plan, which had since been consummated, had served notice pursuant to the Stock Corporation Law demanding payment for his stock. At the stockholders' meeting, this demand was withdrawn as to one of his 381 shares, and on the day following he applied to the Supreme Court, Kings County, for the appointment of appraisers to appraise 380 shares of his stock. Subsequently, after other applications for appraisal had been consolidated with that of plaintiff's, he moved in that court for leave to withdraw from the appraisal proceeding. This motion was denied and an appeal taken to the Appellate Division, which was pending at the time of this decision by the Supreme Court, Special Term, New York County, Part III in connection with the derivative action.

The court ruled that this suit was not maintainable and granted a cross-motion for summary judgment dismissing the complaint, regarding an appraisal as prescribed by Section 21 of the Stock Corporation Law as the exclusive remedy available to the plaintiff, dissatisfied with the terms of the reorganization, observing: "The statute establishes a complete system under which the stockholder is put to his election. He may, on the adoption of the reorganization, accept what the corporation offers or, if dissatisfied, take instead the appraised value of his stock. But he may not affirm in part by accepting what is offered and obtain more in addition. If the stockholder wishes to continue with the reorganized corporation he must under the statute do so on the terms offered by the corporation and approved by the required stock vote."

Blumner v. Federated Department Stores, Inc. et al., *99 N. Y. S. 2d 691. Milton Pollack of New York City, for

plaintiff. Proskauer, Rose, Goetz & Mendelsohn (J. Alvin Van Bergh, Eugene Eisenmann, of counsel), of New York City, for defendants.

* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9491.

Restriction on alienation of stock during lifetime of plaintiff ruled reasonable and valid.

Plaintiff sought a judgment, as to one of the causes of action, declaring provisions of an agreement restricting the alienation of certain stock during the lifetime of the plaintiff invalid and void. The New York Supreme Court, New York County, Special Term, Part I, dismissed the cause of action, observing that reasonable restrictions on the alienation of stock are not prohibited and that what is prohibited is the unreasonable restraint on the transfer of stock. It definitely appearing that the restriction in this instance was not for an unlimited time, but definitely was limited to an event, viz., the death of the plaintiff, the court viewed such a limitation as a reasonable restraint on alienation and valid.

Bruder v. Bruder,* New York Supreme Court, New York County, Special Term, Part I, August 11, 1950. Commerce Clearing House Court Decisions Requisition No. 438405.

*The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9499.

Security required to be furnished for defendant's costs, under Section 61-b, G.C.L., in stockholders' derivative suit against a co-operative building corporation.

In an action in which defendant co-operative building corporation moved to compel plaintiffs to furnish security, under Section 61-b of the General Corporation Law, upon the ground that the plaintiffs were not the owners of at least 5 per cent of the stock of the corporation, the Supreme Court, New York County, Special Term, Part I, noted that "Section 61-b of the General Corporation Law is mandatory by nature and is aimed at the prevention of vexatious suits against corporations unless sanctioned by the owners of at least 5 per cent of the shares of the corporation or unless the plaintiffs are owners of shares which have a value in excess of $50,000."

Ruling that security was required to be furnished, the court remarked: "The Court of Appeals in the case of *Baker v. Boord* (300 N. Y. 325) adopted a practice which permits the court, as long as an action is pending before it, to modify or vacate an order made in the course of the action. The court will therefore adhere to this practice and fix an amount to be furnished by the plaintiffs as security, without prejudice to a motion to vacate if sufficient additional stockholders join to meet the minimum requirements of Section 61-b of the General Corporation Law within a period of sixty days. Settle order. Upon such settlement the court will entertain suggestions as to the amount of security."

Weinstock v. Kallett,* 99 N. Y. S. 2d 783. Commerce Clearing House Court Decisions Requisition No. 438811.

* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9507.

Federal District Court rules corporation not entitled to security under Secs. 61-b and 64, G.C.L., as to defendants in stockholders' derivative action who were not sued because of acts committed as fiduciaries when they were directors, officers or employees.

In a stockholders' derivative action against their two corporations as nominal defendants and against certain individuals and certain corporations to recover damages for the benefit of one of the companies, the two corporations and one individual defendant moved for an order requiring the plaintiffs to file security under Sections 61-b and 64 of the General Corporation Law in the amount of $50,000.

The United States District Court, Southern District of New York, fixed the amount of the bond to be furnished at $1,000, but stipulated that the principal nominal defendant corporation was not entitled to a bond against any possible claim against it by two of the individual defendants who were not sued because of acts they committed as fiduciaries at the time they were directors, officers or employees of either of the nominal corporate defendants. The court pointed out the restricted extent of liability to the furnishing of security to acts committed as fiduciaries at the time the defendants are directors, officers or employees of a corporation as the basis for denying security in respect to these individuals, who were non-fiduciary defendants.

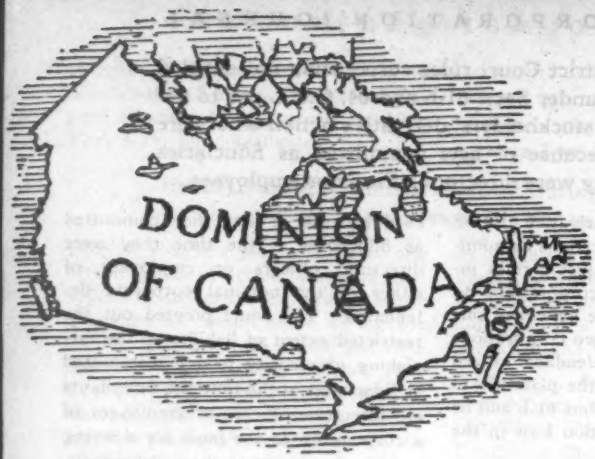
Leven et al. v. Birrell et al., 92 F. Supp. 436. Geller & Saslow (Abraham N. Geller and Robert B. Block, of counsel), of New York City, for plaintiffs. Archibald Palmer of New York City, for defendant Universal.

UTAH

Lack of express authority in charter for its amendment found no bar to amendment, which was expressly permitted by statute.

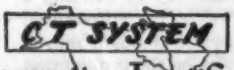
"This action," said the Supreme Court of Utah, "was brought by all but one of the owners of the second preferred (non-callable) shares of stock in the Salt Lake Hardware Co., respondent herein, to determine the right of that corporation to amend its Articles of Incorporation so as to be able to recall and redeem those shares should the Board of Directors of that company desire to do so." The Articles contained no express provision authorizing their amendment by the stockholders. They had, however, been amended from time to time, one of the amendments changing the class of preferred stock by adding a class 2 of 6% non-callable preferred stock, more than two-thirds of the outstanding stock voting in favor of the amendment. Statutory authority existed at the time of the organization of the company permitting the amendment of corporate charters by a vote representing at least two-thirds of the outstanding capital stock at a stockholders' meeting called for that purpose.

The court, approving the amendment, observed: "When the stockholders bought shares in the corporation, the laws of the state controlled the rights between the stockholders and the corporation just the same as if


DOMINION
OF CANADA

g business
Canada

When an *attorney* has the problem of protecting the interests of a corporation client in Canada and wants to review the up-to-the-minute comparative costs, features and procedures of the four different methods discussed on page 243 of this issue, he has only to ask for the information—it will be furnished without cost or obligation of any kind—at the nearest CT office.



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Dover, Del. . . 30 Dover Green	Washington 4 . . Munsey Building
Houston 2 . . . Sterling Building	Wilmington . 100 West 10th Street

UTAH—(Continued)

those laws had been copied in the Articles and their rights were subject to those laws." Consideration was also given by the court to argument that a change in the charter making non-callable stock callable, at a time shortly before the stipulated expiration of the charter of the company, was inequitable. After an examination of the circumstances, the court felt the facts would not warrant a finding that the act of the majority of the stockholders, in amending the Articles to make the non-callable stock callable, was inequitable.

Cowan et al. v. Salt Lake Hardware Co., 221 P. 2d 625. Frank Riter and Ashby D. Boyle of Salt Lake City for appellant. Frank A. Johnson and Dey, Hoppaugh, Mark & Johnson of Salt Lake City, for respondent.

foreign corporations

NEW YORK

Service upon unlicensed foreign corporation set aside where made upon Secretary of State, but service concurrently made on director upheld, where corporation was doing business when contract was made and cause of action arose.

Service of the summons and complaint upon defendant unlicensed foreign corporation was made in two ways: (1) By delivery of a copy to the Secretary of State, and (2) by sending a copy on a director of the corporation in New York City. Defendant moved to vacate the service on the ground that it was not doing business in the state and hence was not subject to the jurisdiction of its courts. There was no adequate showing in the papers that defendant was doing business in the state at the time service was made. "However," observed the Supreme Court, New York County, Special Term, Part I, "defendant was doing business here at the time the agreement forming the basis of plaintiff's action was executed in New York, and when payments were made under it. The question here is whether the subsequent withdrawal of defendant from the state prevents the assumption of jurisdiction in this action. I am convinced that the purported service by delivery to the Secretary of State was invalid because it did not meet the requirements of section 229(2), C.P.A., since that section authorizes service upon the Secretary of State only where a designation of an agent to receive process has been filed. Although defendant did business in this state in violation of section 210, General Corporation Law, in that it failed to obtain from the Secretary of State a certificate of authority, and although, had it filed such a certificate, such filing would have been irrevocable as to any cause

of action arising in the State while it was doing business here (section 216, General Corporation Law), this court is dealing with a statutory method of making service and must find compliance with such method to obtain jurisdiction. Under section 229(2), C.P.A., service must be made upon a 'person or public officer designated for the purpose pursuant to law by certificate filed' in the appropriate department 'whose designation is in force,' or if there has been a designee other than a public officer who is no longer available, then upon the Secretary of State. Since there is not and has never been a designee in the case of this defendant, the provision has not been complied with."

However, the court held that service upon defendant's director was sufficient, under section 229 of the Civil Practice Act, to sustain jurisdiction. The court found basis, in prior decisions for holding, upon the basis of the fact that defendant was doing business in the state when the contract was made and the cause of action arose, "the withdrawal of defendant from the state thereafter did not prevent acquisition of jurisdiction by service upon a director of the corporation in New York even if defendant was not, at the time of service, doing business here. The motion to vacate is accordingly denied."

Mid-Continent Petroleum Corporation v. Universal Oil Products Co.,* Supreme Court, New York County, Special Term, Part I, October 6, 1950. Commerce Clearing House Court Decisions Requisition No. 439995.

*The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9514.

PENNSYLVANIA

Unlicensed corporation conducting local activities, in addition to solicitation of orders, which were habitual, continuous and systematic, ruled doing business so as to be subject to service of process.

One of the defendants, a foreign corporation, entered a preliminary objection to plaintiff's writ of summons, upon the ground that the Court of Common Pleas No. 7, Philadelphia County, had no jurisdiction over it. This corporation had at one time been authorized to do business in Pennsylvania but had withdrawn formally about four years prior to service of the summons. At the time of service, this defendant rented a sales and executive office in Philadelphia which was the same office it had occupied when licensed to do business in the state, which was occupied by six employees, including a district sales manager, three salesmen and two stenographers. The company's name was on the door and in the telephone directory and the office was listed on its stationery and in its annual reports as a branch office. It contended that the branch office was used exclusively for the solicitation of business, all acceptances or rejections of orders secured being made at an office in Connecticut.

The court noted, however, that in addition to soliciting orders, and effecting sales by sample and otherwise, the branch office transmitted complaints received from customers and contacted defendant to expedite the delivery of local orders. Drawings and blueprints were sent by the defendant's customers to the branch office. The customers

cancelled their orders through the branch office and also called at that office to transact their business. In a majority of cases of shipments of defective material, the merchandise was handled through the branch office, either by the salesman calling in person for the material or by the customer delivering it to the branch office. Where possible, the salesmen settled complaints themselves without forwarding them to the main office. The company also had distributors throughout the Philadelphia sales district, handling its products, and all orders from the distributors were processed through the branch office.

The court concluded that the "defendant was clearly doing business when service in this action was made," emphasizing that there was "solicitation plus other activities," concluding: "According to the undisputed facts defendant's activities here have been habitual, continuous and systematic, lasting from December, 1944, to the service of process in June, 1949, and of sufficient quality and quantity to justify the conclusion that it is doing business here."

Lutz v. Foster & Kester Co., Inc. et al.,* Court of Common Pleas No. 7, Philadelphia County, September 15, 1950. Commerce Clearing House Court Decisions Requisition No. 440811.

* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,719.

taxation

IOWA

Construction equipment, purchased in other states, but not specifically for use in Iowa, and used temporarily in Iowa, held not subject to the use tax.

In *Morrison-Knudsen Co., Inc. v. State Tax Commission*, decided by the District Court of Iowa, Polk County, January 8, 1949 (The Corporation Journal, June, 1949, page 352), the Iowa use tax was upheld, where it was imposed on used construction equipment, purchased at different times across an eight-year period, which a corporation had brought into the state and which it removed from the state upon the completion of its work there.

The corporation was a Delaware company, with its principal place of business in Idaho, and it was engaged in large construction jobs for railroads and others throughout the United States. In completing work in Iowa for a railroad, which was commenced about May, 1945, and finished later that year, it brought into Iowa 105 items of construction equipment, which it removed from the state when the work was completed. The Tax Commission set up a proposed assessment of use tax against the company, based on the original purchase price of the equipment brought into Iowa. The trial court upheld the tax and denied the company refund of the tax paid. The State Supreme Court noted that the use tax statute does not, in clear

and unmistakable terms, impose a tax upon personal property first used in the state for a limited period long after its purchase and use in other states, without prior intent to use it in Iowa, and that the tax was imposed only on such property as was purchased for use in Iowa. The company conceded that it was liable to the use tax on 22 of the 105 items which had, in fact, been purchased after January, 1945, and brought into Iowa for use, for the first time, there. The court, in reversing the judgment of the trial court as to the remaining equipment, which had been purchased over an eight-year period with no definite expectation of use in Iowa, ruled that this equipment was not purchased for use in Iowa and that no use tax was due in connection with it. Mandamus was held to lie to compel the commission to refund this use tax.

*Morrison-Knudsen Co., Inc. v. State Tax Commission,** 44 N. W. 2d 449. Valentine & Greenleaf of Centerville, for appellant. Robert L. Larson, Attorney General, and Henry W. Wormly, Special Assistant Attorney General, for appellees. Commerce Clearing House Court Decisions Requisition No. 440664.

* The full text of this opinion is printed in the **State Tax Reporter,** Iowa, page 6273.

state legislation

Forty-four State Legislatures are scheduled to meet in regular session in 1951.

The States which omit regular sessions in 1951 are Kentucky, Louisiana, Mississippi and Virginia.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CONNECTICUT. Docket No. 132. *Spector Motor Service, Inc. v. O'Connor,* 181 F. 2d 150. (The Corporation Journal, May, 1950, page 153.) State franchise tax liability—qualified interstate trucking corporation—interstate commerce. **Petition for writ of certiorari filed, June 15, 1950. Certiorari granted, October 9, 1950. (71 S. Ct. 49.) Argued, November 29 and 30, 1950. Dennis P. O'Connor substituted as defendant, November 30, 1950.**

GEORGIA. Docket No. 4. *Georgia Railroad & Banking Company v. Redwine,* United States District Court, Northern District of Georgia, July 29, 1949. (The Corporation Journal, February, 1950, page 92.) Property tax exemption—suit against state in Federal Court. **Appeal filed, November 12, 1949, Jurisdiction noted, December 5, 1949. February 20, 1950:** *"Per curiam:* Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient State remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies." **(70 S. Ct. 472.)**

ILLINOIS. Docket No. 133. *Norton Co. v. Department of Revenue,* 405 Ill. 314, 90 N. E. 2d 737. (The Corporation Journal, April, 1950, page 128.) State Retailer's Occupation (Sales) Tax—interstate shipments into Illinois. **Petition for writ of certiorari filed, June 15, 1950. Certiorari granted, October 9, 1950. (71 S. Ct. 49.) Argued, December 6, 1950.**

NEW JERSEY. Docket No. 384. *State of New Jersey v. Standard Oil Co.,* 74 A. 2d 565. (The Corporation Journal, October, 1950, page 186.) Personal property—corporations—escheat. **Appeal filed, October 25, 1950. Probable jurisdiction noted, December 4, 1950.**

TENNESSEE. Docket No. 400. *Crane Co. v. Carson,* Tennessee Supreme Court, July 15, 1950. (The Corporation Journal, November, 1950, page 216.) State franchise and excise taxation—allocation formulas. **Petition for certiorari filed, November 3, 1950. Certiorari denied December 11, 1950.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1950-1951.

regulations and rulings

Alabama—The American Red Cross is considered an agency of the United States, and, as such, its purchases are exempt from the sales and use tax. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, Alabama, ¶ 69-013.)

Arizona—Where a corporation is reporting to Arizona on the apportionment method for income tax purposes, the practice has been to use only United States assets and United States sales as the factors in arriving at the percentage of profit due the state. Since it is mandatory that the companies keep separate accounting records for their foreign operations so they can make tax returns to the countries involved, the only factors to be used in making the Arizona return should be the domestic factor and domestic income. (Letter of Arizona Tax Commission, State Tax Reporter, Arizona, ¶ 1034c.057.)

Kentucky—Income derived from isolated sales by a foreign corporation in Kentucky is not subject to the income tax, since the tax is imposed only upon income received by nonresidents from business that is regularly and systematically carried on in Kentucky. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ 10-102.)

Nevada—The fee to be paid by a foreign corporation for filing an amendment to the certificate of incorporation not involving an increase of authorized capital stock, a certificate of reduction of capital or a certificate of retirement of preferred stock, is $20 for each such amendment, notwithstanding that several such certificates may be submitted by a corporation at the same time. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Nevada, ¶ 2-402.)

North Carolina—A corporation which proposes to construct and operate an underground pipe line across North Carolina for the transmission of gas from Texas to New York, and to sell natural gas at wholesale to public utility distributing companies in North Carolina, is not doing business in North Carolina so as to be required to domesticate. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, North Carolina, ¶ 2-012.)

Oregon—As a matter of policy, the minimum excise tax will not be assessed against a corporation unless 50% of the stock has been subscribed and the corporation is otherwise qualified to do business under Sec. 77-215, O.C.L.A., unless the corporation actually has transacted business. (Legal Department Extract, State Tax Reporter, Oregon, ¶ 10-209.)

Utah—The Secretary of State must issue a certificate of incorporation upon the payment of required fees and where the articles meet statutory requirements, even though the title to the principal assets of the proposed corporation is presently being litigated in a receivership proceeding. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Utah, ¶ .002.)

some important matters

for January and February

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama—Annual Application for Permit to do Business due on or before February 1.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before February 1.—Domestic and Foreign Corporations.

Alaska—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

Returns of Tax Withheld at the source due on or before January 31.—Domestic and Foreign Corporations.

Arkansas—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

California—Quarterly Retail Sales Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Colorado—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Connecticut—Quarterly Retail Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30 of any previous year).—Domestic and Foreign Corporations.

Delaware—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

District of Columbia—Annual Report due between January 1 and January 20.—Domestic Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Dominion of Canada—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

Illinois—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

Indiana—Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information and Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

Iowa—Quarterly Retail Sales Tax Returns and Payment due on or before January 20.—Domestic and Foreign Corporations.

Kansas—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Kentucky—Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

Louisiana—Annual Report due on or before February 1.—Domestic Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Maine—Annual License Fee due on or before March 1.—Foreign Corporations.

Maryland—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Massachusetts—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Minnesota—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Missouri—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Montana—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 31.—Domestic and Foreign Corporations.

New York—Annual Franchise Tax Report and Tax of Real Estate Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate Corporations. Form 42 CT, Art. 9 of the Tax Law.

Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Returns of Tax withheld at the source due on or before March 1.—Domestic and Foreign Corporations.

North Dakota—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

Ohio—Report to Department of Industrial Relations due on or before February 1.—Domestic and Foreign Corporations employing three or more persons in Ohio.

Retail Sales Tax Return and Vendors' Excise Tax due on or before January 31. Domestic and Foreign Corporations.

Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Oklahoma—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Oregon—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before January 30.—Domestic and Foreign Corporations.

Pennsylvania—Report of Unclaimed Dividends, Credits, etc., due in January.—Domestic Corporations.

Rhode Island—Annual Report due during February.—Domestic and Foreign Corporations.

South Carolina—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Return due during February.—Domestic and Foreign Corporations.

South Dakota—Annual Capital Stock Report due before March 1.—Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Texas—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

United States—Withholding at source due or or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due or or before February 15.—Domestic and Foreign Corporations.

Utah—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Vermont—Returns of Information and Withholding at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Virginia—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

West Virginia—Annual Business and Occupation (Gross Sales) Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

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Supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Corporate Tightrope Walking. An informal presentation of recent developments affecting corporations carrying on business in interstate commerce—developments corporation officers and attorneys will want to watch carefully.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

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Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

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